

805 KAR 8:040. Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises.

RELATES TO: KRS 13B.090, 351.1041, 351.120, 351.194, 352.010-352.540

STATUTORY AUTHORITY: KRS 351.025(1)(b), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Energy and Environment Cabinet to promulgate administrative regulations he deems necessary and suitable for the proper administration of KRS Chapter 351. KRS 351.025(1)(b) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed this type of violation.

Section 1. (1) If an owner or part-owner of a licensed premises commits a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$2,500 and not more than \$10,000.

(2) If an owner or part-owner of a licensed premises applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352, subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety shall consider that adverse adjudication during its consideration of the individual's application. The Division of Mine Safety may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(3) If an owner or part-owner of a licensed premises applies for a license to operate a coal mine in the Commonwealth of Kentucky subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety shall consider that adverse adjudication during its consideration of the application. The Division of Mine Safety may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(4) If an owner or part-owner of a licensed premises commits a second offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$5,000 and not more than \$10,000.

(5) If an owner or part-owner of a licensed premises applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352, subsequent to a second offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety shall consider that adverse adjudication during its consideration of the individual's application. After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to be certified in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mine Safety Review Commission and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS

13B.090(7). The Division of Mine Safety may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(6) If an owner or part-owner of a licensed premises applies for a license to operate a coal mine in the Commonwealth of Kentucky subsequent to a second offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety shall consider that adverse adjudication during its consideration of the application. After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to hold a mine license in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mine Safety Review Commission and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The division may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(7) If an owner or part-owner of a licensed premises commits a third offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$7,500 and not more than \$10,000.

(8) Upon the adjudication by the Mine Safety Review Commission of a third offense committed by an owner or part-owner of a licensed premises, whether those offenses were committed at the same mine or at more than one (1) mine, the owner or part-owner shall not be eligible to obtain or hold any mine certificate or mine license within the Commonwealth of Kentucky.

(9) Penalties against owners or part-owners of licensed premises, imposed pursuant to subsection (1), (4), or (7) of this section, shall only be imposed for the individual acts of the owner or part-owner, not for the acts of another.

(10) If an owner or part-owner of a licensed premises is also a certified miner at the time of committing his first or second offense, the Mine Safety Review Commission may additionally impose on that owner or part-owner any nonmonetary penalties applicable to certified miners pursuant to 805 KAR 8:030. (28 Ky.R. 2129; Am. 29 Ky.R. 714; eff. 9-16-2002; 44 Ky.R. 694, 1526; eff. 2-2-2018.)